

S/N 09/559,065  
Docket: YOR919990479US1

### **REMARKS**

Entry of this Amendment is proper under 37 CFR §1.116, since no new claims or issues are raised and Applicants merely point out that newly-cited reference, Patent Publication No. US2001/0053694 A1 to Igarashi et al. fails to qualify as prior art under 35 USC §102(e), or any other paragraph of 35 USC §102, due to its later filing date (e.g., January 12, 2001) in the United States than the filing date (e.g., April 28, 2000) of the present Application.

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability.

It is further noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-48 are all of the claims pending in the present Application. Claims 31-39 and 48 are allowed.

Applicants gratefully acknowledge the Examiner's indication that claims 11, 14-16, 18, and 24-27 would be allowable if rewritten in independent format. Applicants decline to rewrite the above-identified claims at this time in independent format, since it is believed that the independent claims are fully allowable over the prior art of record.

Claims 1-10, 12, 13, 17, 19-23, 28-30, and 40-47 stand rejected under 35 USC §103(a) as unpatentable over US Patent 5,719,854 to Choudhury et al., further in view of US Patent Application Publication US 2001/0053694 A1 to Igarashi et al.

This rejection is respectfully traversed in view of the following discussion.

### **I. THE CLAIMED INVENTION**

As described and claimed, for example, by claim 1, the present invention is directed to a method for managing and controlling allocation and de-allocation of resources based on a guaranteed amount of resource and additional resources based on a best effort for a plurality of customers. Server resources are dynamically allocated for a plurality of customers, such

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that the resources received by a customer are dynamically controlled and said customer receives a guaranteed minimum amount of resources as specified under a service level agreement (SLA). The service level agreement includes at least one parameter for re-defining dynamically the process of allocating and de-allocating the server resources.

The prior art of record fails to teach or suggest this concept of dynamic allocation of server resources as based on a service level agreement that includes one or more parameters that dynamically re-defines allocation and de-allocation.

An advantage of the present invention is that it allows the server resources' owner to develop a business contract that defines how the resources will be allocated/de-allocated/re-allocated in a simple explanation to customers and in a manner that dynamic allocation calculations are much simpler, since the conditions of dynamic allocation changes are defined by specific parameters that are included in the service level agreement.

That is, there is no need to expend tremendous calculation effort to attempt to optimize a very complicated problem (e.g., contrast the present invention with the calculations involved in Choudhury), if such allocation parameters are not used.

## II. THE PRIOR ART REJECTION

The Examiner alleges that US Patent US Patent 5,710, 854 to Choudhury, further in view of newly-cited US Patent Application Publication US 2001/0053694 A1 to Igarashi et al., renders obvious claims 1-10, 12, 13, 17, 19-23, 28-30, and 40-47.

Applicants submit that the rejection currently of record fails to meet the initial burden of a *prima facie* rejection, since the newly-cited reference is not qualified as prior art against the present Application because its US filing date January 12, 2001, is later than the US filing date April 28, 2000, of the present Application.

Hence, turning to the clear language of independent claims 1, 40, 41, and 47, there is no teaching or suggestion of " ... said service level agreement including at least one parameter defining conditions of dynamically allocating and de-allocating said server resources."

For the reasons stated above, the claimed invention is fully patentable over the cited references.

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### III. FORMAL MATTERS AND CONCLUSION

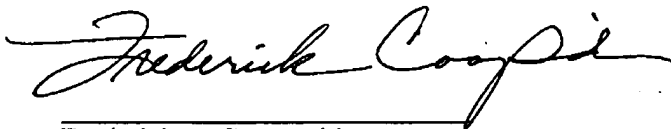
In view of the foregoing, Applicant submits that claims 1-48, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date: 1/3/05



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### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that I am filing this Amendment Under 37 C.F.R. §1.116 by facsimile with the United States Patent and Trademark Office addressed to Examiner Wen Tai Lin, Group Art Unit 2154, at fax number (703) 872-9306 this 3rd day of January, 2005.



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